

OLC-78-1144/1

SEC

7 April 1978

MEMORANDUM FOR: [] Acting Legislative Counsel
FROM : [] AC/C&R
SUBJECT : Telephone Conversation with Don Sanders,
Senate Select Committee on Ethics Staff, on the Proposed
Memorandum of Understanding between the DCI and
the Morgan-Schmitt Subcommittee []

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1. [] Don Sanders, staff of the Senate Select Committee on Ethics, called today and submitted the following comments from Co-Chairman Morgan to the proposed Memorandum of Understanding which we forwarded to him on 4 April 1978. Sanders requested that we consider the comments and get back to him with an Agency position.

a. Revise the last sentence of paragraph 5: "The Subcommittee will inform the DCI of any findings or conclusions of its investigations which bear on his statutory responsibility for the protection of intelligence sources and methods."

COMMENT:

[] Sanders stated that the investigation involves a separate branch of government. Accordingly, the Senate should exercise its own judgment as to whether to notify the DCI of any finding or conclusions if there has been no violation of law and only administrative disciplinary action taken. Senator Morgan does not consider it obligatory that the DCI be informed of such action since it rests within the prerogatives of the Senate. Sanders indicated that there may be instances where the Subcommittee would determine it necessary to notify the DCI, however, they would not want to make notification mandatory.

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☐ Sanders requested that this sentence be revised along the lines that the Subcommittee is "sensitive" to the DCI's responsibilities to protect intelligence sources and methods.

b. Strike the first sentence of paragraph 6: "Notes based on classified material provided by the DCI which are taken by Subcommittee personnel are subject to review, sanitization and classification prior to removal from CIA premises."

COMMENT:

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☐ Sanders stated that the conduct of the Senate investigation rests within the prerogatives of the Senate and need not be disclosed to CIA. He said that notes taken from CIA material may be slanted toward the Senate's interest in the investigation. Accordingly, review of the notes by CIA might reveal this Senate interest. Sanders felt that this presents no problems since any CIA documents would have been fully sanitized to remove intelligence sources and methods and any other information not considered relevant to their investigation prior to review. He added that the only concern remaining would be the proper classification of the notes and this could be made clear to the reviewer at the time the material is made available. He assured that the reviewer would accept the level of classification determined necessary by CIA and would classify the notes accordingly.

c. Strike paragraph 8: "Subcommittee procedures for access, control or storage of material which the DCI has designated as requiring protection, will be in accordance with security standards established and approved by the DCI. The Subcommittee accepts full responsibility to ensure proper protection and control of all such material, in accordance with security standards established by the DCI, when such material is in the custody of the Subcommittee."

COMMENT:

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☐ 25X1
I explained to Sanders that this is necessary to assure that our information is given proper protection and further pointed out that our Office of Security had already inspected his office and approved the physical security procedures. I emphasized that this requirement holds for all committees of Congress which retain our classified information and he would not want to leave the impression 25X1
that his Subcommittee has the latitude to use less than CIA criteria. Sanders said he agreed 25X1

X1 2. ☐ I recommend we compromise on the objections to the last sentence of paragraph 5. 25X1

☐ As a compromise, I recommend that this sentence be revised as follows:

"The Subcommittee recognizes and is sensitive to the DCI's statutory responsibility for the protection of intelligence sources and methods and will take appropriate action in those instances where the findings or conclusions bear upon this statutory responsibility."

X1 3. ☐ I recommend we accept Sanders' objection to the first sentence of paragraph 6 concerning notetaking. Any documents provided for review will be fully and completely sanitized. As long as we have assurances that the notes are properly classified and will be afforded proper storage and disclosure protection, there would be no need to review the notes before leaving the building. I recommend that this sentence be revised as follows:

"Notes based on classified material provided by the DCI which are taken by Subcommittee personnel will bear a classification commensurate with the sensitivity of the material reviewed."

X1 4. ☐ If you agree, we will discuss these changes with OGC and the DDO and if acceptable to them, we will get back to Sanders for final approval.



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CENTRAL INTELLIGENCE AGENCY

Office of Legislative Counsel
Washington, D. C. 20505

Telephone:

TO: Mr. Donald Sanders
Morgan-Schmitt Select Committee on
Ethics Subcommittee
United States Senate

Don:

04 APR 1978

Enclosed is what we think is a
workable Memorandum of Understanding
between the DCI and the Subcommittee.
 head of my Coordination
and Review Staff, is ready to meet with
you should you have any questions.

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Legislative Counsel

Enclosure

FORM 1533 OBSOLETE
6-68 PREVIOUS
EDITIONS

(40)

OLC 78-1144/a
Distribution:
Orig - Addressee
1 - OLC Subject
1 - OLC Chron
OLC:GMC:jms (4 Apr 78)

MEMORANDUM OF UNDERSTANDING
BETWEEN THE DIRECTOR OF CENTRAL INTELLIGENCE
AND THE MORGAN-SCHMITT SENATE SELECT COMMITTEE ON
ETHICS SUBCOMMITTEE (SSCES)
REGARDING SUBCOMMITTEE INVESTIGATIONS OF UNAUTHORIZED
DISCLOSURES OF INTELLIGENCE INFORMATION

1. The Director of Central Intelligence (DCI) is prepared to cooperate fully in Subcommittee investigations of possible unauthorized disclosures of intelligence information by Members, officers, or employees of the Senate undertaken pursuant to S. Res. 338, 88th Congress (as amended) and S. Res. 400, 94th Congress.
2. The Subcommittee recognizes the DCI's statutory responsibility for the protection of intelligence sources and methods, and the obligation of senior Intelligence Community officials to report serious or continuing breaches of security to the Attorney General in accordance with Section 1-707 of E.O. 12036.
3. The DCI and the Subcommittee are aware that public acknowledgements of investigations of unauthorized disclosures that tend to confirm the authenticity of the information disclosed can jeopardize the intelligence sources and methods involved and do additional damage to U.S. interests.
4. To assist the Subcommittee in its investigations of possible unauthorized disclosures by Members or staff of the Senate, the DCI will, when requested, provide access to relevant classified material originated by the Central Intelligence Agency (CIA). Information not clearly relevant to such investigations will be deleted from any material made available; however, the subject of relevancy in a given situation can be raised for discussion by the Subcommittee and the CIA. All requests for classified material will be in writing. The element which is responsible for conducting liaison with the Subcommittee is the Coordination and Review Staff of the Office of Legislative Counsel; Subcommittee requests for information will be directed exclusively to this component.
5. All classified material to which access is granted will normally be reviewed on CIA premises. Requests for the removal and storage of classified material will be considered on a case-by-case basis. Classified material which is removed will not be reproduced. Upon completion of an investigation of a particular incident any material made available to the Subcommittee by the DCI to support that investigation, and which may still be in the custody of the Subcommittee, will be returned to the DCI. [The Subcommittee will inform the DCI of any findings or conclusions of its investigations which bear on his statutory responsibility for the protection of intelligence sources and methods.

Written to be reprinted

all struck

6. Notes based on classified material provided by the DCI which are taken by Subcommittee personnel are subject to review, sanitization and classification prior to removal from CIA premises. Upon request of the notetaker, representatives of the DCI will explain the reasons for any deletions. Sanitized notes may be stored at a location designated by the Subcommittee provided the storage facility is approved by the DCI.

7. Access by Ethics Committee or Subcommittee personnel to any material which has been designated by the Director of Central Intelligence for protection from unauthorized disclosure will be granted only on the basis of a security clearance which meets the standards established by the DCI and set forth in DCID 1/14, 13 May 1976. Prior to being granted such access, Committee or Subcommittee personnel will execute a nondisclosure agreement which is acceptable to the Subcommittee Chairman and Vice Chairman and to the DCI, and a copy of the agreement will be furnished to the DCI.

8. Subcommittee procedures for access, control or storage of material which the DCI has designated as requiring protection, will be in accordance with security standards established and approved by the DCI. The Subcommittee accepts full responsibility to ensure proper protection and control of all such material, in accordance with security standards established by the DCI, when such material is in the custody of the Subcommittee.

9. The Subcommittee recognizes that CIA affiliation can be sensitive, and the Subcommittee will not directly contact CIA personnel. Upon request, the DCI will obtain and make available information known to CIA personnel which is relevant to Subcommittee investigations. The Subcommittee agrees to advise the DCI of information coming to its attention regarding the possible involvement of CIA personnel in an unauthorized disclosure so that a full investigation may be undertaken by the CIA in accordance with established procedures.

10. In view of the fact that certain former CIA personnel would be placed in jeopardy by sudden and unexpected disclosure of their past CIA affiliation, the Subcommittee will give the DCI an opportunity to advise it in advance concerning the circumstances of each such person the Subcommittee may wish to interview.

11. If at any time the Subcommittee determines that it wishes to make public any classified information, any information which constitutes intelligence sources or methods, or any information that would tend to confirm the authenticity of the information involved in an unauthorized disclosure, either as an official Subcommittee action or pursuant to the nondisclosure agreement executed by Subcommittee personnel, the Subcommittee will notify the DCI in writing. The DCI shall respond in writing within five working days after receipt of such a communication. If the DCI objects to public disclosure,

representatives of the DCI and the Subcommittee will meet and attempt to resolve the matter. If these representatives are unable to resolve all points at issue, those remaining points will be taken up by the Chairman of the Senate Select Committee on Ethics and the DCI. If issues still remain following discussion between the Chairman and the DCI, the Chairman will forward these issues to the Senate Select Committee on Intelligence for resolution pursuant to Section 8 of Senate Resolution 400, 94th Congress, 2d Session.

Director of Central Intelligence

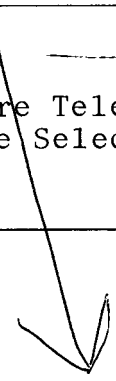
Date

Chairman, Senate Select Committee
on Ethics Subcommittee

Date

Vice-Chairman, Senate Select
Committee on Ethics Subcommittee

Date

TO : LLM		DATE OF REQUEST 11 Apr 78
FROM : PLC 11 APR 1978		SUSPENSE DATE
SUBJECT: Memo re Telephone Conversation with Don Sanders, Morgan-Schmitt Senate Select Committee on Ethics Subcommittee, Re MOU		
NOTES <div style="text-align: center;">  <p>see LLM note on page 3. pilly</p> </div>		
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ACTION REQUIRED BY GLC		